

1
2
3
4
5
6 BEFORE THE INSURANCE COMMISSIONER
7 OF THE STATE OF WASHINGTON

8 In the Matter of the Application regarding
9 the Conversion and Acquisition of Control
10 of Premera Blue Cross and its Affiliates

Docket No. G02-45

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
PREMERA'S SUPPLEMENTAL
STATUS REPORT

11 The First Status Report of OIC Staff ("the OIC Staff Report") contains many statements that
12 are either erroneous or incomplete. Premera, therefore, feels compelled to submit this Supplemental
13 Status Report. Its purpose is not to place blame but only to set the record straight.

14
15 OVERVIEW

16 The over-arching theme of the OIC Staff Report is that Premera has been "tardy," or has
17 otherwise delayed the process to date. In fact, the record (as outlined in the following chronology
18 and analysis) clearly demonstrates that Premera has been very responsive to every OIC Staff request
19 and proactive in facilitating the timely resolution of those disagreements that have arisen. The OIC
20 Staff, on the other hand, has contributed to delay by taking more than a month after it selected its
21 consultants to enter into their engagement agreements. The OIC Status Report says that the OIC
22 cannot now meet its December 1 deadline for the delivery of the consultants' report because Premera
23 was supposedly tardy. In reality, the OIC Staff cannot meet its deadline because it did not proceed
24 in a timely manner.

25 Regardless of these past events, Premera believes that there is no reason why the OIC Staff
26 and Premera cannot complete all the tasks necessary for a hearing to be held and for the

1 Commissioner to give his written decision on Premera's application, all by the March 1, 2003 date
2 proposed by Premera.

3 CHRONOLOGY OF EVENTS

4 Premera first notified the Commissioner of its proposal to convert to a for-profit, stock
5 corporation on May 30, 2002. On June 6, June 27 and July 22, Premera representatives met with
6 OIC representatives to review the transaction steps contemplated by the proposal, to discuss the
7 process by which the OIC would undertake its review of the proposal, and to address specific issues
8 such as the confidentiality of proprietary and trade secret information that was expected to be
9 requested in connection with the OIC's review of the Premera proposal.

10 On July 19, the OIC provided a Premera representative with the OIC's work plan, dated as of
11 July 17, 2002, for reviewing the Premera proposal. The OIC's work plan set forth a timeline that
12 incorporated such tasks as the preparation and distribution of Requests for Proposals ("RFPs") for
13 the engagement of various consultants, the closing of the RFP responses, and the notice of the RFP
14 award. The OIC work plan set December 27, 2002 as the date for the Commissioner's decision on
15 Premera's Form A application.

16 By letter dated August 27, 2002, Premera confirmed that it would work to meet the OIC
17 timeline and that it would extend the Holding Company Act review period to December 27, as
18 requested by the OIC .

19 On July 29, an OIC representative gave Premera a draft of the consultant RFP and asked for
20 comments. Premera timely provided its comments on August 1. The OIC mailed the RFP to several
21 potential consultants on August 2.

22 By memorandum from James T. Odiorne dated September 19, the OIC notified all of the
23 RFP bidders of the apparent successful bidders. At the request of the OIC, representatives from
24 Premera first met with the consultants, none of whom had yet entered into a consulting agreement
25 with the OIC, on October 14. The purpose of the meeting was to discuss the logistics for reviewing
26

1 information to be requested by the consultants. The confidentiality of the proprietary and trade
2 secret information that was expected to be reviewed by the consultants was again discussed, but not
3 finally resolved, at the October 14 meeting. Premera received the initial data requests from the
4 OIC's consultants on October 22, which requests were later supplemented by additional data
5 requests submitted to Premera on November 1.

6 However, at the time the initial data requests were issued on October 22, the OIC Staff had
7 still not entered into written engagement agreements, nor had any of the consultants entered into
8 confidentiality agreements by that date.

9 The first of the consulting engagement agreements with the OIC was entered into on
10 November 1; the last consulting engagement agreement was entered into on November 8. After
11 receiving some of the drafts of the consulting agreements from the OIC on October 28 (which drafts
12 disclosed the scope of the proposed work), Premera was in a position to begin discussions with each
13 of the engaged consultants about the scope and terms of a non-disclosure/confidentiality agreement
14 to protect the confidential, proprietary and trade secret information requested by the consultants. All
15 such non-disclosure/confidentiality agreements were in place by November 11. By letter dated
16 November 13, Mr. Odiorne confirmed OIC's position re treatment of confidential documents.
17 Premera's appropriate concerns about confidentiality were thereby resolved. Premera already had
18 provided the consultants with access to approximately 5,000 pages of non-confidential documents on
19 November 7 and, once the confidentiality issue had been resolved, provided access to confidential
20 documents as well. As of November 15, Premera has made available more than 16, 000 pages of
21 documents for consultant review.

22 CORRECTION OF THE OIC STAFF'S STATEMENTS

23 The following is a summary of the key points in the OIC Staff Report that require correction.
24 If the Commissioner wants further details or documentation concerning any of these points, Premera
25 will provide the same on request.
26

1 For ease of comparison, we will use the same headings as appear in the OIC Staff Report.

2 “1. Whether the OIC Staff has issued data or information requests to PREMERA and,
3 if so, the nature of those requests.”

4 Section 1 of the OIC Status Report could be read to imply that all data and information
5 requests by OIC Staff consultants are required as part of the Form A filing. OIC Staff took that
6 position in its November 19 letter. Premera does not quarrel with the general proposition that the
7 OIC Staff and its consultants may request data and information. However, Premera restates its
8 position that data and information requests beyond what the statute and regulation require are not
9 appropriately part of the Form A filing.

10 “2. The status of PREMERA’s responses to any requests.”

11 There is no factual basis for the OIC Staff Report’s assertion that Premera has been “tardy”
12 in marshalling information responsive to any requests. Specifically, Premera takes exception to the
13 OIC Staff’s assertion that Premera allegedly began delaying the document production as early as
14 mid-October or that at any time Premera acted inappropriately with respect to the data requests.
15 The first written data request by the consultants was only presented to Premera on October 22. As
16 indicated above, more than 16,000 pages of documents were provided to the consultants by
17 November 15. Premera continues to expeditiously work on completing its response to the data
18 requests. As a result, there has not been, and should not be, any delay in the orderly review of these
19 documents by the OIC Staff or its consultants.

20 With respect to the scheduling of the meetings between the consultants and Premera’s
21 executive management, Premera began its efforts to schedule those meetings as soon as the data
22 requests were made on October 22. Premera took every step to facilitate early and productive
23 meetings, including arranging for an initial meeting on November 7. As soon as the confidentiality
24 issues were worked out in mid-November, the OIC Staff and Premera agreed to a date for
25 management interviews in late November.

1 The facts demonstrate that Premera has always been, and continues to be, committed to
2 cooperating fully with the OIC and the consultants in responding to any request relevant to their
3 review of the Premera proposal.

4 “3. Plans of OIC Staff, if known at this time, to issue data and information requests to
5 PREMERA in the future.”

6 The oral requests made by the consultants for additional information have generally been for
7 information already requested by them in the their written data requests.

8 Given the broad scope of the requests made to date, it is hard to imagine what additional data
9 or documents the OIC Staff or its consultants could want. In that regard, it is telling that the OIC
10 Staff cannot articulate at this time any specific additional information requests that it plans on
11 making.

12 “4. Each party’s estimate of the time that each party’s experts will require to prepare written
13 reports regarding the proposed transaction.”

14 The OIC Staff selected consultants with extensive expertise in conversions. Based upon that
15 expertise, the OIC Staff and its consultants agreed, as reflected in their engagement agreements, that
16 the consultants’ draft reports would be completed by December 1. In effect, they agreed to deliver
17 the draft reports within 30 days after the first of the engagement agreements was signed, which was
18 on November 1. Now, for no apparent reason, the OIC Staff and its consultants want 60 days from
19 some unspecified date in the future -- even though they already have access to a significant portion
20 of the document production.

21 Applying that 30-day timeline liberally and giving the OIC Staff the benefit of the doubt, the
22 OIC consultants should be able to complete their written report by December 15, which is 30 days
23 from November 15, the date on which the 16,000 pages were made available to the consultants. As
24 stated in Premera’s status report, Premera has requested an opportunity to review and comment on
25 the consultants’ report, for confidentiality issues and factual accuracy, before it is released. Premera
26

1 commits to do this analysis within seven days of receipt of the report. Accordingly, the consultant
2 report could, and should, be delivered to the Commissioner on December 23, 2002.

3 DATED this ____ day of November, 2002.

4 PRESTON GATES & ELLIS LLP

5
6 By _____
7 Thomas E. Kelly, Jr., WSBA # 05690
8 Kirk A. Dublin, WSBA # 05980
9 Attorneys for PREMERA, Premera Blue Cross
10 and their affiliated companies

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
PREMERA and Premera Blue Cross

By _____
Yoram Milo, Chief Legal Officer
John P. Domeika, General Counsel

1 **PROOF OF SERVICE**

2 I certify that I served a copy of this document on all parties or their counsel of record on the
3 date below as follows:

4 U.S. Mail postage prepaid via consolidated mail service

5 X Via Facsimile followed by Legal Messenger Service

6 State Campus Delivery

7 Hand delivered by _____
8

9 I certify under penalty of perjury under the laws of the State of Washington the the foregoing
10 is true and correct.

11 DATED this ____ day of November, 2002.
12
13
14

15 Robert B. Mitchell
16

17 James T. Odiorne
18 Deputy Insurance Commissioner
19 Company Supervision
20 P.O. Box 40259
Olympia, WA 98504-0259

Melanie C. deLeon
Assistant Attorney General
Office of the Insurance Commissioner
P.O Box 40100
Olympia, WA 98504-0100

21 Address for Messenger Service:
22 5000 Capitol Blvd.
Tumwater, WA 98501

Address for Messenger Service:
1125 Washington Street S.E.
Olympia, WA 98504-0100